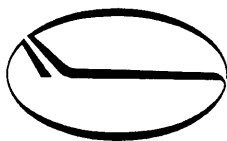


58441

RSPA-99-5013-43

DEPT. OF TRANSPORTATION  
DOCKETS

99 JUN 30 PM 3:13



Air Transport Association

58441

June 18, 1999

Dockets Unit  
Research and Special Programs Administration  
U.S. Department of Transportation  
400 Seventh Street, SW - Room 842 1  
Washington, DC 20590

Re: DOT-RSPA NPRM in Docket HM-229

Dear Sir or Madam:

The Air Transport Association of America (ATA) takes this opportunity to respond to the DOT RSPA Advance Notice of Proposed Rulemaking Docket HM-229 Hazardous Materials: Revisions to the Incident Reporting Requirements (5800.1) as contained in the *Federal Register*, Vol. 64, No. 55, dated March 23, 1999.

ATA is the trade and service organization of the U.S. scheduled airlines and, as such, we assist our members in the formation of air carrier policy with respect to hazardous materials.

In the attachment, ATA is responding to the portion of the 35 questions posed in the ANPRM that we feel could reflect on air transportation.

We look forward to the opportunity to further respond to this important issue in the NPRM phase.

Sincerely,

Frank J. Black  
Director,  
Cargo Services & Secretary  
Dangerous Goods Board

Attachment:

cc: ATA Dangerous Goods Board  
James Casey, ATA

**Air Transport Association of America**  
130 1 Pennsylvania Ave., NW - Suite 1100 Washington, DC-20004- 1707  
(202) 626-4000

<sup>1</sup> The Member airlines are: Airborne Express, Alaska Airlines, Aloha Airlines, America West Airlines, American Airlines, American Trans Air, Atlas Air, Continental Airlines, Delta Air Lines, DHL Au-ways, Emery Worldwide, Evergreen International Airlines, Federal Express, Hawaiian Airlines, Midwest Express Airlines, Northwest Airlines, Polar Air Cargo, Reeve Aleutian Airways, Southwest Airlines Co., Trans World Airlines, United Airlines, United Parcel Service, and US Airways. The Associate members are Aeromexico, Air Canada, Canadian Airlines International, KLM - Royal Dutch Airlines, and Mexicana.

**Hazardous Materials Incident Reporting - Questions Asked in the ANPRM**  
**In Docket HM- 229**

**1. Should the hazardous materials incident reporting requirements be extended to persons other than carriers (such as freight forwarders, warehouse operators, consignees, etc.)?**

Yes, at least to those involved in the transportation cycle such as forwarders and logistics specialists.

**2. Should RSPA require reporting of any incident involving discovery of an undeclared shipment of a hazardous material whether or not there is a release of the hazardous material?**

Yes, this provides a statistical confirmation, which is not necessarily there today.

**Should the expanded requirement apply only to incidents discovered by a carrier during transportation?**

No, to anyone to which the requirement applies.

**Should the expanded requirement apply to discovery by a consignee or other person during or following delivery of the material?**

RSPA should not apply any reporting requirement to a consignee following delivery of a hazardous material. The one party on whom we know there are not already existing regulations is the consignee. So an attempt to impose a reporting requirement on a consignee could be an exercise in futility. There is a vast number of consumers receiving merchandise that is regulated as hazardous materials, and it is a simple truth that they might have no necessary way to identify the merchandise as regulated hazardous materials, let alone to be aware of a requirement to report *undeclared* hazardous materials.

**Telephonic Notification (see Sec. 171.15)**

**3. Currently, immediate notification is required for incidents where estimated carrier or other property damage exceeds \$50,000. Is this monetary reporting threshold reasonable? Should it be modified or eliminated? If modified, to what amount? Why?**

**4. Should any other current requirements for immediate notification be modified or eliminated?**

There are six types of discrepancies that require immediate reporting under 49 CFR 175.31. It appears that one of them could be improved, the requirement for reporting of "In inside containers which are not authorized or have improper closures" (§175.31(b)(1)(iii)).

The phrasing “improper closures” needs to be clarified; does RSPA intend the phrase mean closures that are *in themselves improper* (e.g., chemically incompatible, or lacking in some factor such as missing clips for paint can lids) or otherwise proper closures that *are not properly applied* (i.e., caps not fully torqued)?

**If so, explain your suggested modification, the reasons for the modification, and anticipated impacts.**

**5. Should RSPA require immediate telephonic notification for any other type of incident?**

**6. In addition to notifying the National Response Center, should a carrier also be required to give immediate telephonic notification of an incident to the person who offered the hazardous material for shipment?**

This is a nice idea but not practical. For existing accounts, telephone information would be available. But when shippers tender apparently non-hazardous packages over the customer counter, they may not provide valid telephone numbers – and in fact we have direct experiences with just this problem. In this way, a requirement to notify the person who offered the shipment could cause unanticipated problems.

**7. If an incident requiring immediate telephonic notification occurs at the location of an offeror or consignee, should the offeror or consignee be required to provide the notification?**

This raises questions about whether a material is technically in transportation, and about the larger policy goal RSPA hopes to serve. Why does RSPA want to know about an incident before a package enters transportation? Such an incident at the location of the person who planned eventually to ship the leaking package sounds much more clearly to be an OSHA-related incident. And if the package has been delivered to a consignee before the incident occurs (or is detected), than any attempt by RSPA to impose a reporting requirement on the consignee depends on the consignee knowing that he or she is governed by transportation rules. See answer to question 2 above.

**Should such notification be in addition to, or instead of notification from the carrier? What would be the usefulness and burdens associated with such a requirement?**

How would the carrier know?

**Written Reports (see Sec. 171.16)**

**8. Is the current regulatory language clear as to when a written incident report is required? If not, what changes should RSPA make?**

**9. To provide a broader perspective for risk management in more critical hazardous material transportation situations, should additional information be collected through the incident reporting system to document successful performance and better gauge the integrity of packaging? For instance, should information be collected on certain highway accidents whether or not a hazardous material has been released? Would an appropriate definition of “accident” for reporting purposes be “any collision, rollover, jack-knife, or departure from the roadway”? Should additional reporting be limited to certain packagings or materials such as-**

- \* Cargo tanks, portable tanks, and IM portable tanks with a capacity greater than 1000 gallons;**
- Cylinders containing flammable gas with a water capacity greater than 100 pounds;**
- Explosives in packaging greater than 50 pounds; or**
- Toxic-by-inhalation liquids or gases in any quantity and packaging?**

**Should such additional reporting be limited to situations where there is exposure to fire or damage to the packaging? Should reporting be required for railway accidents that do not involve the unintentional release of hazardous materials, or do mechanisms exist to adequately capture this information apart from DOT Form F 5800.1?**

**10. Should RSPA expand the exceptions in Sec. 171.16(c) to include any other hazardous material; class, division, or packing group; or quantity limitations? If so, indicate the exception and why.**

**11. Is there a spill quantity of an excepted material that should trigger incident reporting? For example, a spill of paint from a packaging with a capacity of less than 5 gallons is not reportable. Should a spill of a certain quantity of hazardous material be reportable regardless of the capacity of the packaging in which it was contained (e.g., a release from numerous small packagings)?**

We have some skepticism about the appropriateness of RSPA’s current relief from reporting the items for which exceptions are provided on the ground, especially paint, which is a notoriously common cause of spills, and LTD QTY shipments, which are distinct in their lack of government packaging requirements. However, since they are ground exceptions, we cannot comment further.

**DOT Form F 5800.1 (See Appendix)**

**12. Should RSPA develop an abbreviated incident report form for incidents of low severity? What criteria could be used as a threshold? What minimal information should be required for a low severity incident?**

What will RSPA define as “low severity?” The problem is that FAA agents currently

have mistaken interpretations of the incident reporting rules. For example, some agents demand a telephone report for a declared hazmat incident, even when the criteria of § 17 1.15 or § 175.3 1 are not met. Others expect a written incident report for discrepancies that do not spill but are reportable under § 175.3 1. The addition of a “low severity” form might only multiply these misunderstandings.

**13. Should DOT Form F 5800.1 be structured to more accurately describe the cause and manner of a packaging failure?**

We do not believe it appropriate for carrier personnel to be venturing analysis as to the cause of packaging failure. Such a practice makes non-experts responsible for accident analysis, when truly such a process is the province of trained experts. Also, it opens liability concerns with respect to customers’ perceptions of carrier reports. If a customer believes the carrier has alleged an incident is due to insufficient packaging, then certain customers may open legal action against the carrier.

**How could this be done to better capture human causal factors?**

We believe that if RSPA wants to have this information, it should be developed through inspections by appropriate government personnel, not by seeking the opinions of non-experts.

**14. Would replacing the current check boxes on DOT Form F 5800.1, sections V 24 and VI 25 thru 29, with numerically coded responses or other means to better identify how the incident occurred, increase the difficulty or lengthen the time it takes to complete the report?**

**15. Would replacing the boxes on DOT Form F 5800.1, section VIII parts 41 thru 45, with numerically coded responses or other means to identify the reasons why the packaging failed, increase the difficulty or lengthen the time it takes to complete the report?**

**16. What additional fields, if any, should be included on the report form to indicate the amount of hazardous material that was initially in the package?**

This opens the possibility of distinguishing between bulk and non-bulk shipments. A simple field asking for the net quantity of the outer container will assist. However, RSPA needs to put some thought into the structure of even a simple-sounding field like this. The complexity of overpacks, of multiple erroneously combined (undeclared) hazardous materials, and of mixed contents shipments will need to be taken into consideration.

**17. Would the information required by section VII of the report form be easier to understand if column C was removed, column A was renamed “Inner Package”, and column B was renamed “Outer Package”? Why?**

Not necessarily. The three columns are indeed very hard to understand. We have found that when multiple-layered packages are involved, there may be no sensible way for a columned form to apply. For example, it is not unheard of to see incidents in which a plain (essentially unmarked) outer package contains more than one inner packages, of which at least one is a fully marked and labeled inner package that leaks a hazardous material. The confusion generated by the columns is only magnified when employees are trying to figure out the best way to fill out the three columns. But it is very difficult to express all the details of some of the worst undeclared shipments in this “one-size-fits-all” form.

**18. Should there be either separate sections on DOT Form F 5800.1 for reporting bulk and non-bulk packagings or a separate incident report form for these packagings?**

We believe that the form suffers from trying to be “one size fits all.” A form specifically tailored to the shipment of non-bulk packages would be beneficial. Even more beneficial would be availability of an air-only report form. ICAO is considering a recommendation in this area. Carriers from countries around the world reporting on the same form would have great advantages for governments and carriers.

**19. Should we require more specific incident location data, such as mile-post or street address, if available? How difficult would it be to obtain and report this information? What additional benefit would the information provide?**

**20. How can better information be provided on DOT Form F 5800.1 as to the transportation phase of an incident (e.g., when the incident most likely occurred?)**

This raises a question about the difference between when an incident occurred and when it was discovered. In the air carrier business, incidents are most often discovered on the ground. As to when the shipment actually occurred, this will be merely a matter of conjecture on the part of the responding employees.

**21. Should RSPA require updates to Section V 18 through V 23, the incident consequences fields, if additional or better data are available after the incident report form was submitted to DOT? Should RSPA set an amount or percentage change to trigger filing of a supplemental report?**

**22. Should better information on release duration be collected (for example, the length of time a vapor is dispersed)?**

The example given appears to point to the need for distinctions between bulk and non-bulk shipments. The length of time during which a vapor is dispersed is difficult to calculate and subject to possible misinterpretations. For example, does RSPA mean the time during which an odor is present?

**How could this be done?**

**23. How can RSPA acquire better information on failures, such as estimated dimensions of cracks or punctures?**

This is information appropriate to a bulk shipment. Again, if RSPA needs this kind of detail, it should distinguish clearly between bulk and non-bulk shipments.

**24. What burden would you incur from a requirement to submit copies of photographs in your possession when specified criteria are met?**

If implemented, this requirement would require a camera to be available at every operating location of the affected carrier (which could be a large number), and then for adequate copies to be available.

In order to provide photos, a company would need to take enough that they could be shared with the government. However, when Polaroid cameras are used (very common in some companies for their instant results), there will be no negatives from which to make copies of successful pictures. Therefore, a requirement to furnish pictures may generate a need for a company to decide who gets the “better” pictures. Also, with the dual filing requirement (FAA and RSPA) applied to air carriers, the question becomes even more complicated: which photos go to which agency?

**25. Should reporting of information concerning duration of an evacuation be included on the incident report form?**

**26. Should RSPA add an additional section to the incident report form to include information regarding who was injured or required hospitalization (e.g., general public, employees, or emergency response personnel)?**

**27. Should RSPA add a section to the incident report form to identify the UN packing group, if any, of the hazardous material and the packaging?**

**28. Are you aware of other Federal reporting forms that duplicate information required by DOT Form F 5800.1? If so, how could RSPA link the necessary transportation data to other required Federal reporting forms?**

**Customer Uses and Needs**

**29. What data and information do you use from the incident report form and for what purpose?**

**30. What additional data not now collected on the incident report form should be collected and for what purpose would it be used?**

**31. Should access to incident data be available via the Internet? If only select data could be provided because of cost or technology considerations, what data would be most useful to you?**

**32. RSPA is considering optional electronic filing of incident reports by facsimile (fax), electronic mail (e-mail), and Internet. Do you have recommendations concerning implementation of electronic filing?**

Electronic filing sounds attractive, especially through the Internet. The following are some points that need to be taken into consideration:

- The person filing the report should be given the possibility of printing the report when it is filed.
- At the same time, the person filing should be able to retain an electronic file with the report information.
- There needs to be a way to file without a hand signature.
- A specific identifying code (to distinguish one report from another) might be useful.

**Are there other means of electronic filing that RSPA should consider?**

Some companies have internal systems that they may wish to enable to link to RSPA for an EDI transaction. RSPA could facilitate this kind of filing by creating a report form in one or more common formats, such as Microsoft Excel and equivalent programs.

**33. How would you use a tracking system for DOT Form F 5800.1 submissions and processing status?**

A tracking system would keep reports from being confused with each other. With respect to tracking of processing status, why does a carrier worry about that detail?

## **National Transportation Safety Board (NTSB) Recommendations**

**Recommendation R-89-52 states that RSPA should:**

**Establish procedures that require carriers reporting hazardous materials incidents under the provisions of 49 CFR 171.16 to notify shippers whose hazardous materials shipments are involved.**

**34. In accordance with NTSB recommendation R-89-52, what would be the potential benefits or impacts of requiring carriers (other than private motor carriers) reporting hazardous materials incidents under 49 CFR 171.16 to notify shippers whose hazardous materials shipments are involved in the incident being reported?**



**Recommendation H-92-6 states that RSPA should:**

**Implement, in cooperation with the Federal Highway Administration, a program to collect information necessary to identify patterns of cargo tank equipment failures, including the reporting of all accidents involving DOT specification cargo tanks.**

**35. In accordance with NTSB recommendation H-92-6, how could RSPA, in cooperation with FHWA, improve the current incident reporting program to collect information identifying patterns of cargo tank equipment failures, including reporting of all accidents involving a DOT specification cargo tank, whether or not a release occurred?**